

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TYRONE P. JAMES,	:	
Plaintiff,	:	
	:	Civil Action No. 1:CV-01-1015
	:	
v.	:	
	:	Judge Yvette Kane
YORK COUNTY POLICE	:	(Magistrate Judge Mannion)
DEPARTMENT, AGENT JAMES	:	
H. MORGAN, DET. RICHARD	:	Electronically filed
PETTICORD, DET. RAYMOND E.	:	
CRAUL, DET. JEAN FELS, DET.	:	
KESSLER, C/O BAYLARK,	:	
Defendants.	:	

**REPLY BRIEF OF RANDY SIPES TO PLAINTIFF’S
RESPONSE TO MOTION TO DISMISS**

**[Federal Rules of Civil Procedure Rules 8, 12(b)(2), 12(b)(5),
and 12(b)(6)]**

Plaintiff’s response in no way changes the fact that service has not been effected on Mr. Sipes, under either Federal Rules, Pennsylvania Rules or California Rules. Further, no amount of argument or attachment of extraneous papers not included in any pleading mailed to Mr. Sipes will constitute the requisite service of a complaint or amended

complaint on Mr. Sipes. Finally, again, no argument or attachment of extraneous papers will change the fact that Mr. Sipes was not served with any documents setting out any facts regarding his involvement in this case. He received by regular mail what is evidently a version of an early complaint which does not name him in the caption or the body, or set out any facts regarding his involvement. Thus, having failed to properly allege any facts as to Mr. Sipes, plaintiff has also failed to bear his burden of proving, either by sworn affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction.

Plaintiff is evidently relying on a court order allowing amendment of his complaint to constitute an actual amendment to his complaint. However, Federal Rule of Civil Procedure, Rule 15(a) requires an amended “pleading,” not simply an amendment to a pleading. Further, Local Rule 15.1 requires as an attachment to a motion requesting leave to file an amended pleading, a proposed amended pleading, complete in itself, to be filed as a separate document. The case of *Cureton v. National Collegiate Athletic Ass'n*, 252 F.3d 267,273 (3rd Cir.2001) further provides that a court may deny a request to amend a complaint if the movant fails to provide a draft amended complaint. There is evidently no amended complaint in this case. However, even if there is, Mr. Sipes has not been served at all, and attempted service was only with a complaint neither naming him, nor containing any allegations regarding him. Thus, Plaintiff has also failed to state a claim against Mr. Sipes.

Thus, Randell Sipes respectfully requests that this Court grant his motion to dismiss this case under Federal Rule of Civil Procedure, Rule 8, for failure to make "a short and plain statement of the claim showing that the pleader is entitled to relief"; Rule 12(b)(2), for "lack of jurisdiction over the person"; under Rule 12(b)(5), for "insufficiency of service of process"; and under Rule 12(b)(6) for "failure to state a claim upon which relief can be granted."

Dated: April 15, 2004

BILL LOCKYER, Attorney General
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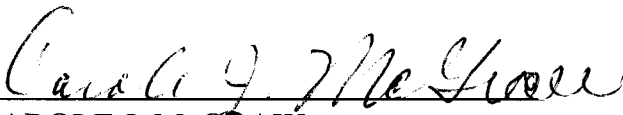
CERTIFICATE OF SERVICE

I, Carole J. McGraw, Secretary to Kristin G. Hogue, Supervising Deputy Attorney General for the State of California, Office of Attorney General, hereby certify that on April 15, 2004, I caused to be served a true and correct copy of the foregoing document Entitled Reply Brief of Randy Sipes to Plaintiff's Response to Motion to Dismiss by depositing same in the United States Mail, first-class postage prepaid to the following:

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